



October 4, 2010

Sheila Albin
Staff Attorney
Office of General Counsel
National Credit Union Administration
1775 Duke Street,
Alexandria, Virginia 22314-3428

Reference: Low Income Definition Interim Final Rule and Request for Comment
12 CFR Part 701, RIN 3133-AD75

Dear Ms. Albin:

On behalf of the National Federation of Community Development Credit Unions (the Federation), I would like to thank NCUA for this opportunity to comment on the above-referenced Interim Final Rule, which was published on August 5, 2010. Since 1974, the Federation has focused exclusively on expanding credit union services to low-income communities and members. As a result, we are keenly aware of the impact of NCUA rules and regulations on credit unions that seek to fulfill their complex mission of serving the underserved.

Our overall comment on the amendment contained in the Interim Final Rule (IFR) is that although the amendment to the low-income definition is reasonable, it is largely irrelevant since it does not address a fundamental barrier that prevents credit unions from using **actual income** to demonstrate eligibility for designation as a Low Income Credit Union (LICU). We hope that you will consider the approach that we have set forth, using survey data, to fashion a final rule that will be more equitable and effective and in line with the policies and practices of other federal agencies, especially the CDFI Fund.

1. Use of Surveys

The Final Rule enables credit unions to “*present actual member income information, for example, from loan applications or a survey*” to demonstrate that a majority of their members are low-income. Recently, NCUA has determined that the word “survey” as used in this sentence in the Final Rule does not mean a statistically valid random sample, but rather a census of all credit union members that can produce hard, numerical evidence that 50% plus 1 of all members have qualifying low-incomes. This interpretation of the word survey is internally inconsistent with the Final Rule itself and effectively eliminates the use of actual income data for two reasons:

- First, the terms “survey” or “surveys” appears five times in the Final Rule. In two of those instances the word “survey” is defined as statistical random sampling



methodology used by the U.S. Census Bureau, with sample size calculated at a 90% confidence level. In the other three cases the Final Rule states that credit unions can use actual income information collected from a “survey” or “surveys”, but NCUA has stated that credit union surveys are defined differently than Census Bureau surveys (although no such distinction is drawn in the Final Rule).

- Second, credit unions only collect solid income information from their borrowers, not from all of their members. Since the median ratio of borrowers to total members for all federally insured credit unions is 40% (and for LICUs the ratio is 35%), it is mathematically impossible to use loan applications – as recommended by the Final Rule itself -- to document in absolute terms that more than 50% of all members have qualifying low incomes.

2. Alignment with CDFI Fund

One of the stated aims of the Final Rule is to bring the criteria for LICU designation into closer alignment with the criteria used by the U.S. Treasury Department CDFI Fund for certification of Community Development Financial Institutions (CDFIs). The CDFI Fund has long recognized that some financial institutions focus their services on the poorest members in communities where the median incomes are higher. These CDFIs are eligible for certification by demonstrating that more than 60% of their members belong to a “Low Income Targeted Population”, with actual incomes of less than 80% of the area median. Like NCUA, the CDFI Fund has acknowledged that financial institutions should be able to demonstrate eligibility based on the people whom they actually serve. Unlike NCUA, the CDFI Fund accepts statistical random sampling as a means of demonstrating eligibility for CDFI certification.

3. Inequality of Regulatory Burden

The Federation believes that the regulatory burden for qualifying as a LICU should be reasonably equal for all credit unions that serve a majority low-income membership. Currently, however, the regulatory burden is highly unequal: very light for credit unions that serve low-income census tracts, and impossibly heavy for credit unions that serve low-income populations within higher-income census tracts.

Recommendation

The Federation recommends that NCUA remove the regulatory barriers that prevent credit unions from using actual member data to demonstrate that more than 50% of their members have qualifying low-incomes. To do this, **NCUA should accept actual member income information collected from a survey of credit union borrowers, defined as a rigorous, statistically valid random sample.** The Federation suggests that NCUA could provide parameters in the Final Rule, such as minimum statistical confidence levels, to ensure that the LICU determinations are based on consistently rigorous analyses. For example, the median income benchmarks currently used by NCUA, which are produced by the Census Bureau’s American Fact Finder, have a statistical confidence level of 90%.



Again, many thanks for this opportunity to comment on the IFR. I would welcome the opportunity to discuss this further at your convenience.

Sincerely,

Clifford N. Rosenthal
President / CEO